

31A-27a-111 Actions by and against the receiver.

- (1)
 - (a) An allegation by the receiver of improper or fraudulent conduct against a person may not be the basis of a defense to the enforcement of a contractual obligation owed to the insurer by a third party.
 - (b) Notwithstanding Subsection (1)(a), a third party described in this Subsection (1) is not barred by this section from seeking to establish independently as a defense that the conduct is materially and substantially related to the contractual obligation for which enforcement is sought.
- (2)
 - (a) Subject to Subsection (2)(b), a prior wrongful or negligent action of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver:
 - (i) under a theory of:
 - (A) estoppel;
 - (B) comparative fault;
 - (C) intervening cause;
 - (D) proximate cause;
 - (E) reliance; or
 - (F) mitigation of damages; or
 - (ii) otherwise.
 - (b) Notwithstanding Subsection (2)(a):
 - (i) the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract; and
 - (ii) a principal under a surety bond or a surety undertaking is entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that:
 - (A) the receiver has possession or control of the property; or
 - (B) the insurer or its agents misappropriated, including commingling, the property.
 - (c) Evidence of fraud in the inducement is admissible only if it is contained in the records of the insurer.
- (3) Action or inaction by an insurance regulatory authority may not be asserted as a defense to a claim by the receiver.
- (4)
 - (a) Subject to Subsection (4)(b), a judgment or order entered against an insured or the insurer in contravention of a stay or injunction under this chapter, or at any time by default or collusion, may not be considered as evidence of liability or of the quantum of damages in adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.
 - (b) Subsection (4)(a) does not apply to an affected guaranty association's claim for amounts paid on a settlement or judgment in pursuit of the affected guaranty association's statutory obligations.
- (5) The receiver may not be considered a governmental entity for the purposes of any state law awarding fees to a litigant who prevails against a governmental entity.

Enacted by Chapter 309, 2007 General Session